

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WILLIAM R. GOBELI,
Plaintiff,

v.

CIVIL ACTION NO. 2:07cv24

COMMISSIONER OF SOCIAL SECURITY,
Defendant.

REPORT AND RECOMMENDATION/OPINION

On November 20, 2006, William R. Gobeli, the plaintiff, *pro se*, filed a Complaint in this matter. The Court Clerk issued to Plaintiff a “Notice of General Guidelines for Appearing Pro Se in Federal Court” on March 14, 2007. The Court Clerk issued to Plaintiff summonses addressed to the Commissioner of Social Security, U.S. Attorney General, and U.S. Attorney, on March 23, 2007. Attached was a form for “Return of Service,” for Plaintiff to use to prove he served the defendants. A review of the docket in this matter shows no further action, and, in particular, indicates that the defendants have not been served.

Federal Rule of Civil Procedure 4(c)(1) states as follows:

A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

Federal Rule of Civil Procedure 4(m) provides the following time limits:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

On April 2, 2008, the Court entered an Order directing Plaintiff to serve Defendants and file proof of service within thirty (30) days, or to show good cause for his failure to do so. Plaintiff was advised that failure to do either would result in the undersigned United States Magistrate Judge

recommending that the District Court dismiss this case.

A review of the docket in this matter on June 3, 2008, shows Plaintiff has neither served Defendants nor responded to the Court's Order to show good cause for failure to do so.

RECOMMENDATION

For the above reasons, the undersigned respectfully **RECOMMENDS** that the plaintiff's Complaint (Docket No. 1) be **DISMISSED** without prejudice for failure to serve Defendants and for failure to comply with the Court's April 2, 2008, order.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to Plaintiff, *pro se* by certified mail, return receipt requested.

DATED: July 16, 2008.

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE